HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 3 OF 1996.
From
WRIT PETITION NO. 3651 OF 1988.

Mr. M. V. Kulkarni,
Adult, Occu: Nil,
23, Guru Prasad, 1st floor,
Dombivli (East). Appellant.

Versus.

M/s. Paper & Pump Conversions
Ltd., Khopoli. Respondent.

Appellant in person.

CORAM: S.B.MHASE &
D.B.BHOSALE, JJ.

DATE: JANUARY 19, 2005.

Oral Judgment (Per S.B.MHASE,J.)

1. This Letters Patent Appeal is directed against the judgment and order dated 29.3.1995 passed by the learned Single Judge of this Court in Writ Petition No. 3650 of 1988, whereby the writ petition filed by the appellant was dismissed. Said writ petition was arising out of the common judgment and award delivered by the Labour Court, Thane in Reference (IDA) Nos.98/1980, 99/1980 and 101/1980, whereby the Labour Court has dismissed all these references, upholding the action of termination of services of the appellant, however directing to pay compensation of Rs.50,000/- to the appellant. The reference No.(IDA)101 of

1980 was in respect of the present appellant from which Writ Petition No. 3651 of 1988 arose, which was ultimately dismissed.

2. Even though the learned Single Judge has disposed of 3 writ Petitions, namely, W.P. Nos. 3650 of 1988, 3651 of 1988 and 3652 of 1988, by a common judgment, the Petitioners in W.P.Nos. 3650 of 1988 and 3652 of 1988 have not challenged the order of the Learned Single Judge. Therefore, there is challenge by the present appellant only, who filed Writ Petition No. 3651 of 1988.

3. Along with the present appellant, the respondent has terminated the services of 9 other employees from 28th June 1979 on the ground that the continuation of their services is detrimental to the Company's interest. All these 10 workmen raised an industrial dispute for re-instatement in service with full backwages. During the course of conciliation, two of such workmen other than the appellant, were taken back in service since they have given written apology and undertaking regarding maintaining the discipline and proper production. Other four workmen settled their dispute directly with the respondent on monetary basis. Remaining four workmen including the present appellant, persuaded their dispute, resulting into the filing of references as stated above. Out of the four cases referred

to the Labour Court, only three came up before the Learned Single Judge. Now, out of those three writ petitions, which were disposed of by the learned Single Judge by a common judgment, only one Letters Patent Appeal of the present appellant is before this court, as stated earlier.

4. This Letters Patent Appeal was initially filed through Advocate Shri.D.S.Mhaispurkar, however, at the time of final hearing of the appeal, the appellant himself remained present and submitted that the appellant is personally going to argue the matter. Advocate-D.S.Mhaispurkar was absent. Therefore, we heard the appellant in person. The appellant in person has made oral submissions and has also tendered written arguments.

5. Before we consider the challenge raised, it would be appropriate to place on record, that the order dated 28th June 1979, terminating the services of the appellant on the ground that the services of the appellant in the employment of the respondent were detrimental to the Company's interest, was passed without holding domestic or departmental enquiry as contemplated under the Standing Orders. According to the appellant, the ground stated in the said order was not correct and was false one. According to the appellant, service of the appellant was terminated along with other employees for their Union activities since the appellant and

other employees were insisting that after the expiry of the earlier settlement, which was to expire on 30th June 1980, no further settlement should be carried out with the employer and instead the matter should be taken to the Labour & Industrial Court for adjudication of their demands in respect of the wage, salary and other benefits. Therefore, the case alleged by the appellant is that he was not doing anything which was detrimental to the interest of the respondent -company but the respondent has victimised the appellant for the trade union activities. In a written submissions which have been tendered in Marathi, the appellant has repeatedly submitted that both the courts, namely, the Labour Court and the learned Single Judge of this court have rendered unjust decisions. The appellant tried to point out that the reports which were filed by the Company did not show that the appellant has participated in any activity which was detrimental to the interest of the Company. He has submitted that out of several reports, his name appears only in few reports. The appellant has submitted that therefore the findings recorded by the Labour Court to the effect that the activities of the appellant were detrimental to the interest of the company, is not just and proper. The thrust of the arguments of the appellant is that his services have been terminated without holding any enquiry and the evidence which was produced by the employer directly before the Labour Court by availing an opportunity under section 11(A) of the

Industrial Disputes Act,1947, was not sufficient to hold him guilty of misconduct, as has been held by the Labour Court. The appellant submitted that the order of termination be declared as illegal and the order of re-instatement with backwages may be granted. Except these submissions, no other argument was advanced by the appellant, who is a party in person.

6. It is to be noted that it is an admitted fact that the order of termination dated 28th June 1979 was passed by the respondent without holding any enquiry, however, since the said order was passed, without holding an enquiry, the respondent availed of its right under section 11(A) of the Industrial Disputes Act, 1947 and has led evidence of the employees of the respondent- Company and also produced on record the reports given by the various offices of the respondent showing the involvement of the appellant, which shows that the activities of the appellant were detrimental to the interest of the Company. It is to be noted from the judgment of the learned Single Judge that the then learned counsel for the appellant had tried to perusade the learned Single Judge to evaluate the evidence in respect of the misconduct afresh, however, the learned Single Judge after having gone through the said evidence and findings recorded by the Labour Court has concluded that the findings have been properly recorded. It is further recorded by the learned

Single Judge that the findings have not been vitiated as a result of the perversity or impropriety and, therefore has refused to have a fresh appraisal and evaluation of the evidence. We have gone through the evidence and the reasons given by the learned Single Judge and we find that the learned Single Judge has rightly come to the conclusion that the findings recorded by the learned Single Judge are just and proper and no interference is called for.

7. From the impugned judgment and arguments which were advanced before the learned Single Judge, it appears that the attempt has been made by the counsel of the appellant, who had appeared before the learned Single Judge, that since the enquiry was not conducted and the misconduct was established directly before the Labour Court, the findings of the Labour Court will not relate back to the date of order and thereby the appellant is entitled to get backwages from the date of his termination by the Company till the date of finding recorded by the Labour Court holding the appellant guilty. This aspect of the theory of relating back has been thoroughly considered by the learned Single Judge relying upon **AIR-1970 SC 1227** (in the case of Workmen of Firestone Tyre & Rubber Co., v/s. its Management and others) and **AIR-1965 SC 1803** (In the case of Workmen v/s. Motipur Sugar Factory) and **AIR-1976 SC 1760** (In the case of D.C.Roy v/s. the Presiding Officer, Labour Court) and

learned Single Judge has rightly concluded that the case of the appellant cannot be considered for relating back.

8. Therefore, on a scrutiny of the judgment otherwise than the submissions of the appellant in person shows that the points involved were thoroughly considered by the learned Single Judge in reference to the judgments of the various Courts, including the Apex Court and the learned Single Judge has rightly concluded that the appellant is not entitled for the back wages from the date of the order of the termination passed by the Company till the date of findings recorded by the Labour Court holding him guilty. Except these, no other point is reflected from the written submissions of the appellant. Abundantly, we have also gone through the submissions which were considered by the learned Single Judge while deciding the writ petition which were the submissions advanced by the then Advocate for the appellant. We find that the points raised by the appellant have been properly considered by the learned Single Judge, which requires no interference from this court. Letters patent appeal is without any merit, it is accordingly dismissed.

(D.B.BHOSALE,J.) **(S.B.MHASE, J.)**

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